

Claimant worked for respondent as a certified nurses aide (CNA). Claimant testified that from January through March 5, 2004, she was the only CNA on the floor where she worked and, therefore, she lifted residents by herself. On March 5, 2004, claimant was terminated from respondent's employ.

Claimant appeared pro se at the July 28, 2004 preliminary hearing. On examination by respondent's attorney, claimant testified she first noticed she was having problems with her right wrist three weeks before going to the doctor on or about February 23, 2004. Claimant received restrictions from the doctor and presented them to respondent, but she did not tell respondent that she had a work-related problem. After she was terminated by respondent, claimant continued to receive medical treatment. A de Quervain's release was performed on May 18, 2004.

Claimant mailed a letter, dated May 25, 2004, to respondent that provided notice of her accidental injury. Respondent received that letter on May 27, 2004. Claimant argues she told her supervisor her arm was hurting before she went to the doctor. But claimant testified she initially did not tell her supervisor the problem was related to her work. And when claimant tried to provide additional testimony about what she had advised her supervisor, she was interrupted.

Q. (Mr. Morefield) The first time you gave any notice to Valley View was when you sent them a letter dated May 25th, 2004. Correct?

A. (Claimant) Yes. Actually, I had told my supervisor before --

Q. Just a minute, I -- I don't have a --

A. Oh, sorry.

Q. -- question on the floor right now. You filled out an application for hearing --

A. Yes.¹

In general, workers must provide notice of their accidental injuries to their employers within 10 days of an accident.² That period may be extended to 75 days if there was just cause for not providing notice within 10 days.³ Based on the record compiled to date, claimant did not prove she provided respondent with notice of an accidental injury until May

¹ P.H. Trans. at 8.

² K.S.A. 44-520.

³ *Id.*

27, 2004, when respondent received claimant's May 25, 2004 letter. Even if claimant had just cause for not providing notice within 10 days of the accident, May 27, 2004, is outside the 75-day provision in K.S.A. 44-520.

Although claimant may have provided timely notice of her accident, the present record fails to establish that fact. The Board finds and concludes claimant failed to prove she provided respondent with timely notice of her accidental injury. Consequently, the August 2, 2004 preliminary hearing Order should be reversed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴ Respondent's request to dismiss this claim with prejudice is denied.

WHEREFORE, the Board reverses the August 2, 2004 preliminary hearing Order and denies claimant's request for benefits.

IT IS SO ORDERED.

Dated this ____ day of September 2004.

BOARD MEMBER

c: Dan M. McCulley, Attorney for Claimant
Richard W. Morefield, Jr., Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2).